

### **REMARKS**

Claims 1-43, 45 and 47-50 were pending in the present application. By virtue of this response, claim 48 has been cancelled, claim 26 has been amended, and no new claims have been added. Accordingly, claims 1-43, 45, 47, 49, and 50 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

For the Examiner's convenience, Applicants' remarks are presented in the same order in which they were raised in the Office Action.

#### **Response to Amendment**

The Examiner objects to the previously filed amendment of March 22, 2004 under 35 U.S.C. § 132 for introducing new matter into the disclosure. In particular, the Examiner objects to the lower limit of 2% by weight for the dopant in the top cladding layer of claim 26.

Applicants have amended claim 26 herein to recite a lower limit of 6% by weight. The amendment is supported in the present application, for example, in paragraph [0023]. Accordingly, no new matter has been added. Applicants therefore request that the objection be withdrawn.

#### **Rejections under 35 U.S.C. § 112, first paragraph**

Claims 26-43, 45, and 47-48 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

As discussed above, claim 26 has been amended to recite a lower limit of 6% by weight of the dopant in the top cladding layer. Support for the amendment is found in the present application, for example, in paragraph [0023]. Accordingly, Applicants request that the rejection be withdrawn.

**Rejections under 35 U.S.C. § 103(a)**

Claims 26-34, 39-43, 45, and 47-48 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over McGreer (U.S. 2002/0181868) in view of Shimoda (U.S. Patent No. 6,396,988).

The present application (Appl. No. 09/894,049) and McGreer (Application No. 09/870,876; Publication No. 2002/0181868 A1) were, at the time the invention of the present application (Appl. No. 09/894,049) was made, owned by Lightwave Microsystems Corporation. Accordingly, the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same organization or subject to an obligation of assignment to the same organization. See, MPEP §§ 706.02(l)(1), 706.02(l)(2).

**Allowable Subject Matter**

Applicants thank the Examiner for the indication that claims 1-25, 49, and 50 are allowed and claims 35-38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and intervening claims. In view of the comments herein, Applicants respectfully request reconsideration and allowance of all pending claims.

**CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 373722002900. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

By 

Christopher B. Eide

Registration No.: 48,375

MORRISON & FOERSTER LLP

755 Page Mill Road

Palo Alto, California 94304

(650) 813-5720